man, 65 L. J. (Q. B.) 460, where two gold rings were dug up in cleaning out a pool; *Goodard v. Winchell*, 86 Iowa 71, 52 N. W. 1124, where an aerolite was found imbedded in the soil; *Elwes v. The Brigg Gas Co.*, 55 L. J. Ch. 734, where a prehistoric boat was discovered during the course of excavating.

In *South Staffordshire Waterworks Co. v. Sharman, supra,* the court said: "The possession of the land carries with it, in general by our law, possession of everything which is attached to or under the land, and, in the absence of better title elsewhere, the right to possess it also. And it makes no difference that the possessor is not aware of the thing's existence." Again. "The general principle is that where anyone is in possession of house or land which he occupies and over which he manifests an intention of exercising a control and preventing unauthorized interference, and something is found in that house or on that land by a stranger or a servant, the presumption is that the possession of the article found is in the owner of the *locus in quo.*" *Ferguson v. Ray, supra,* was deemed to fall within this principle, and the *South Staffordshire Waterworks Co.* case was cited as controlling.

In the absence of statute, our courts have never decided that treasure-trove, or any part of it, should go to the state, subject to the claim of the true owner. 26 AM. & ENG. ENCY. LAW [Ed. 1] 538. As between the finder and the owner of the premises, it is believed that to make their rights to property dug up from the soil depend upon the inquiry whether such property falls within or without the definition of treasure-trove is to determine their rights upon no sound principle of our law. It is believed the fundamental inquiry in these cases, the true owner being unknown, should be whether the property was in the possession of the owner of the premises at the time of its discovery. If not, then the finder or discoverer would be entitled to continue to possess the property as against all but the true owner; if so, then the owner of the premises would be entitled to hold the property as against the finder by virtue of his prior and continued possession up till the time when that possession was disturbed by the finder. See HOLMES, THE COMMON LAW, pp. 206-246.

This view is not inconsistent with many of the cases of that class where the finder has been given possession, as against the owner of the premises, of property found thereon, for generally the property was found on premises thrown open to the public or to which the public was invited, and so over which the owner was not exercising his right of exclusive control. See *Hamaker v. Blanchard,* 90 Pa. St. 377; *Hoagland v. Forest Park Highlands Amusement Co.*, 170 Mo. 335, 70 S. W. 878; *Bridges v. Hawkesworth,* 21 L. J. Q. B. 75. This latter case was distinguished by the court in the *South Staffordshire Waterworks* case, *supra,* on this very ground.

LANDLORD AND TENANT—RENT—EFFECT OF CHANGE OF LAW UPON OBLIGATION.—In 1914 premises were leased for ten years "for the purpose of carrying on liquor business." After January 1, 1920, the tenant was unable to secure license to operate a liquor store, the Eighteenth Amendment hav-

ing become operative. In action for rent accruing thereafter the tenant claimed to be released from the obligation to pay rent. *Held,* the change in law afforded no defense. *Imbeschied v. Lerner* (Mass., 1922), 135 N. E. 219.

The court said: "If the defendant desired to have protected himself from liability to pay rent, a clause for that purpose should have been inserted in the lease. He seeks to invoke the familiar rule that a contract which cannot be performed without violating the law is void. This is a good rule of law, but it is not applicable to the present case." If, however, the action had been by the landlord for breach of the tenant's covenant to use the premises only for the liquor business, it would seem clear the principle adverted to would have afforded a perfect defense. For a discussion of the problems involved and consideration of the cases, see 16 MICH. L. REV. 534.

NEGLIGENCE—LIABILITY OF SELLER TO THIRD PARTY IN REFERENCE TO A THING NOT INHERENTLY DANGEROUS.—Defendant, a dealer in gas and electrical appliances, sold a gas flatiron to a person who loaned it to plaintiff. While using the flatiron, plaintiff was severely burned by flames coming through the holes in its sides. Defendant did not know that flames would come from the sides of the flatiron. *Held,* plaintiff not entitled to recover, because the flatiron was not an inherently dangerous article. *Pitman v. Lynn Gas and Electric Co.* (Mass., 1922), 135 N. E. 223.

There was evidence that the iron was fundamentally defective, but the court refused to consider whether defendant was negligent because the general rule is that neither the seller nor manufacturer is liable for mere negligence to a third person with whom he has no contractual relations. *Winterbottom v. Wright,* 10 M. & W. 109; *Huset v. J. I. Case Threshing Machine Co.,* 120 Fed. 865; *Earl v. Lubbock,* (1905), I K. B. 253; *Tompkins v. Quaker Oats Co.,* 239 Mass. 147. According to the court, plaintiff did not make out a case coming within the well recognized exception to the above rule: that where defendant sells an article inherently dangerous to life or property, he may be liable to third parties. *Longmeid v. Holliday,* 6 Exch. 761; *Thomas v. Winchester,* 6 N. Y. 397; *McCaffrey v. Mossberg and G. Mfg. Co.,* 23 R. I. 381. A flatiron, said the court, when used for purposes for which it is intended, is not an article commonly recognized as dangerous to human life, even when used in connection with illuminating gas.

In *MacPherson v. Buick Motor Co.,* 217 N. Y. 382, a more liberal conception of an inherently article is entertained. The court reviewed the authorities at great length and in its well reasoned opinion said: "If the nature of the thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger." In accord with this liberalizing of the rule are: *Johnson v. Cadillac Motor Car Co.,* 261 Fed. 878; *Schubert v. Clark Co.,* 49 Minn. 331; *Woodward v. Miller,* 119 Ga. 618. These cases show a recent tendency in certain courts to ex-